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Chairman Ott and fellow members of the Assembly Committee on Judiciary and Ethics:

Thank you for holding this hearing and for the opportunity to appear before you as the lead author of AB 109, which will provide critical reform for Wisconsin's judicial system.

I am pleased to bring this legislation forward at the request of prosecutors and circuit court judges in my area, including consultation with Brown County DA John Zakowski and extensive discussion at Wisconsin's 4th Judicial District meeting with legislators. This bill is simple: it would eliminate the ability of defense counsel in criminal matters to require the substitution of a judge without showing cause. While most states compel criminal defendants or their attorneys to provide good reason why the judge appointed to hear their case cannot be impartial and must be removed, Wisconsin does not, guaranteeing criminal defendants the ability to exclude one judge from presiding over their case. In rural counties with one or 2 circuit court judges, this allows a defendant to require a reserve judge to travel to hear a case, or to effectively pick who the presiding judge will be. This is presently the case in 30 county circuits that are assigned a single judge, and 13 additional circuits with 2 judges, which together makes up 60% of Wisconsin counties.

Several judges I spoke with were worried that if their sentencing practices in any particular case were perceived to be too strict, they could effectively be barred by defense counsel from sitting on similar cases in the future- that's not a concern our judicial system should have to have. Given current uneven substitution practices and consistent feedback from judges and prosecutors, there *is* substantial evidence that "judge-shopping" is occurring in criminal cases. This proposal will effectively purge this perception and bolster the integrity and reputation of Wisconsin's criminal justice system. Thank you for your consideration, and I welcome your questions and ideas.



STATE BAR OF WISCONSIN

Leaders in the Law. Advocates for Justice.

MEMORANDUM

To: Members, Assembly Committee on Judiciary and Ethics
From: State Bar of Wisconsin
Date: June 9, 2011
Re: Opposition to Assembly Bill 109 (Elimination of judicial substitution in criminal cases)

The State Bar of Wisconsin opposes 2011 Assembly Bill 109, which would repeal sec. 971.20, thereby eliminating the right of a defendant in criminal proceedings to judicial substitution under that statute. The State Bar has opposed similar restrictions on the substitution of judges for more than 20 years.

More than 15 years ago, the Wisconsin Supreme Court denied the Judicial Conference's request to eliminate the right of judicial substitution in criminal cases and found no "empirical data, anecdotal information or judicial perception to establish that the judge substitution statutes constitute an undue burden on or substantial interference with the judicial branch."

The primary justification for this measure appears to be anecdotes alleging the perception of "judge shopping." Repealing a statute that has served Wisconsin's criminal justice system well for the last 30 years should be based on more than anecdotes. Judicial substitution is not being abused and it is not "judge shopping." Under current law, a defendant may only substitute a judge once and there are no guarantees about who will be assigned to the case instead. Defendants cannot "shop" for a more lenient judge as supporters of the bill have claimed.

Assembly Bill 109 will merely increase inefficiencies in our severely strained criminal justice system, ultimately increasing the cost paid by the Wisconsin taxpayer for that system. The current system of judicial substitution is quick and efficient compared to its alternative, a motion for disqualification or recusal. Replacing the current substitution system with disqualification motions, hearings on those motions, and more appeals will merely clog our trial and appellate courts with litigation that can be avoided if the existing statute remains undisturbed.

Finally, at a time when there is increasing political concern over the rights of the individual versus the rights of the government, this proposal is difficult to justify. The power of government over the individual is never greater as when it seeks to deprive the individual of his or her liberty. While this bill is based on a stated desire to bolster the integrity and reputation of Wisconsin's criminal justice system, it will have the opposite effect. Judges are substituted to insure a fair trial. Public confidence in the judicial system rests on the public's belief that they will receive a fair trial before an impartial judge. If a person perceives, for whatever reason, that the judge may be less than fair, public confidence in our criminal justice system will be eroded.

The Wisconsin taxpayer cannot afford this measure. It will clog our courts with avoidable litigation, delay the resolution of criminal prosecutions, and is a step backward for the rights of the individual in the face of governmental power. Please do not recommend approval of this bill.